

MEMO ENDORSED

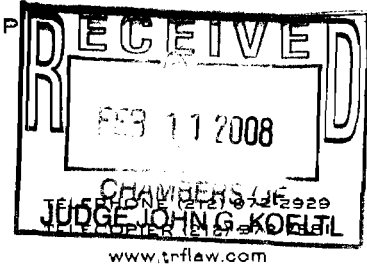
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BY FAX and REGULAR MAIL

Hon. John G. Koeltl  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1030  
New York, New York 10007

Re: Bier v. Grand Toys  
07 CV 7235 (JGK)

Dear Judge Koeltl:

As the Court may recall, this firm represents plaintiff in the above-referenced action. As requested at last week's Rule 16 conference, we have reviewed the Complaint, the facts regarding the parties' citizenship for diversity purposes and applicable law. Based on that review, plaintiff has determined that it would be best to withdraw this action and to re-file in state court. To that end, I proposed this morning to defendant's counsel (John Bennett) that we prepare and execute a voluntary Stipulation of Dismissal pursuant to F.R.Civ.P. Rule 41(a)(1)(A)(ii) to dismiss this action without prejudice. Mr. Bennett responded that he was not in a position to reply at the moment, that he would have to speak with his client, but that he was inclined to submit to a dismissal under Rule 42(a)(1)(B) on terms the court considers proper. Plaintiff is prepared to dismiss this action either by stipulation or by order, and will proceed as the Court directs.

Respectfully submitted

*Barry J. Friedberg*  
Barry J. Friedberg

cc: John K. Bennett (Counsel for Defendant) (By E-Mail)

*The plaintiff seeks to dismiss this action without prejudice. On the face of the Complaint, subject matter jurisdiction is lacking. In any event, the case has not progressed to such an extent that the Court should impose any conditions on the plaintiff's motion to withdraw this action without prejudice. Therefore, this action is dismissed without prejudice pursuant to Fed. R. Civ. P. 41(a). The Clerk is directed to enter judgment dismissing this case without prejudice on closing the case. So ordered. R. G. Koeltl 4-S.D.-J*